IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL REVISION NO.11 OF 1993

DATE OF DECISION: JULY 11, 2007

Shateer Singh

.....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: Mr. Gaurav Chopra, Advocate,
for the petitioner.

Mr. M. C. Berry, Sr.DAG, Punjab,
for the State.

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RANJIT SINGH, J.

The petitioner is alleged to have been intercepted by SI Harbans Singh, SHO, Police Station Mamdot, on the night of 26.2.1985 while he was seen coming from the side of Village Khundar Uttar. SI Harbans Singh accompanied by ASI Lachman Singh, Head Constable Des Raj and some other police officials had made a Nakabandi on the bridge canal minor in the area of Village Daryeke. The petitioner was seen carrying a gunny bag on his head and was challenged by the police party. He tried to escape but was apprehended. Upon search, 30 Kgs. Of opium wrapped in glazed paper from the bag carried on the head of the petitioner was recovered. 10 grams of opium was separated

and the sample was put in a tin box while remaining opium was put into two separate tin boxes.

After completion of formalities, the petitioner was challaned, tried, convicted and sentenced. The prosecution case is supported by the evidence given by ASI Lachman Singh (PW1), Constable Darshan Singh (PW2) Inspector Harbans Singh (PW3) and ASI Gurdip Singh (PW4) and the report of Chemical Examiner.

The petitioner, while entering his defence, denied the prosecution allegation and pleaded his false implication. As per the defence, the petitioner was arrested from his village in the presence of Gurdip Singh and was falsely involved in this case. The petitioner examined Dr.Jaspal Singh (DW1), Gurdeep Singh (DW2) and Surinder Bajaj (DW3) in his defence in support of his case. The petitioner, however, was convicted on 17.1.1992 under Section 9 of the Opium Act and sentenced to suffer RI for 2 years and to pay a fine of Rs.200/-. In default of payment of fine, he was further sentenced to undergo RI for 2 months. He filed an appeal against the conviction and sentence awarded to him, which was dismissed on 24.12.1992. Thereafter, he filed the present revision petition, which is pending adjudication since then.

Learned counsel for the petitioner emphasized that the Court did not properly appreciate the defence of the petitioner, which was sufficiently established on preponderance of probabilities and which created doubt in the prosecution story as projected. As per the counsel, the defence case was required to be accepted and the petitioner is liable to be acquitted.

The case set up by the defence is that the petitioner was

already in police custody for many days. He was mercilessly beaten and in order to cover the injuries suffered by him, this false case was implanted on him. In support of its case, defence referred to the evidence of Gurdeep Singh (DW2), who had submitted application, Ex.DA before Judicial Magistrate Ist Class on 12.2.1985. In this application, DW2 had disclosed that the petitioner, who is his brother-in-law, had been whisked away by the police and was given severe beating, leading to miserable injuries on his person. When the petitioner was produced before the Ilaqa Magistrate for seeking his remand, an application was filed on his behalf for conducting his medico legal examination. On direction by the Magistrate, the petitioner was examined by Dr.Jaspal Singh, Medical Officer, on 26.2.1985. He found the following injuries on the person of the petitioner:-

1. Scar of healed wound 1-1/4 cm x 1 cm at inner and lower part of the right leg.
2. Scar of healed wound 1 cm x 1 cm inner and lower part of left leg.
3. Diffus swelling 20 cm x 15 cm all around the right foot with overlying superficial infected lacerated wound 3-1/4 cm x 2 cm at planter aspect. Pus formation was present in the wound. Fedal Oedeama was present. X-ray was advised.
4. Diffus swelling 15 cm x 10 cm all around the left foot of the middle.

Gurdeep Singh (DW1) was the witness who had been joined as an eye witness to the recovery. He did not support the

prosecution rather he was the one who had moved this application to the Magistrate regarding false implication of the petitioner. Allegation is that the petitioner was taken from his house on 5.2.1985 and was given beating as mentioned. The trial Court as well as the appellate Court rejected the defence case by observing that the application was dated 9.2.1985 and was sent by post. This was received by the Magistrate on 12.2.1985 at about 12.15 noon. It is viewed that the manner in which the application was moved would show that Gurdeep Singh (DW2), who was related to the petitioner, was not prompt enough to take this action. It was also found that DW2 did not take any action to get his relative released. Relying upon the evidence of Dr.Jaspal Singh (DW1), the Court found that duration of the injuries was 2 to 3 weeks, which did not fit in the time frame as alleged from the date of arrest of the petitioner to the date of alleged torture.

I have carefully examined the line of defence projected by the petitioner. No doubt, the defence case would tend to receive some support from the circumstantial evidence. It is strange to notice that Gurdeep Singh (DW2) was joined in as an independent witness, who was found to be closely related to the petitioner. He was given up by the prosecution and hence, appeared as a defence witness. Concededly, he has not come forward to say that the petitioner was arrested in his presence. He, as such, can not be treated as a witness to the facts of the case either to attribute recovery or false implication of the petitioner. The recovery effected from the petitioner in this case is rather heavy. As per the allegation, 30 Kgs. of opium was recovered from the petitioner, which he was

seen carrying on his head. Such heavy recovery could not have been easily procured by the police to implant it on the petitioner to falsely implicate him. No allegation is made that the case property was not available before the court. I am accordingly of the view that chances of false implication, as alleged by the defence, can be ruled out with sufficient assurance in view of the heavy quantity so recovered. Otherwise, the prosecution case is supported by the evidence of official witnesses. Absence of independent witness, in my view, would be immaterial as the alleged recovery was made dead at night at 2 A.M. It would have been rather difficult for the police to join any independent witness at that time, though case set up is that Gurdeep Singh (DW2) had come there by chance and had been joined as independent witness. The petitioner has been convicted on the basis of sufficient evidence and it would not call for any interference.

Counsel for the petitioner then pleads for leniency and show of mercy in the award of sentence due to long pendency of the case. Incident in this case took place in 1985. The petitioner was convicted on 17.1.1992 and his appeal was dismissed on 24.12.1992. The present proceedings, as such, are pending against the petitioner for about 22 years. Learned counsel for the petitioner has drawn my attention to the case of ***Joginder Singh Vs. State of Punjab,*** 2004 (4) RCR (Criminal) 198 to show that the sentence of two years awarded in this case was reduced to the period already undergone on the ground that the proceedings in this case were pending against the person for 21 years. The case of the petitioner is similar to the case of Joginder Singh (supra).

Adopting the same course, the sentence awarded to the

petitioner is reduced to the period already undergone and that in my view would meet the ends of justice. The fine, if not paid, shall be paid by the petitioner and in default thereof, he would undergo a period of RI as awarded in the impugned order.

Subject to these observations, the revision petition stands dismissed.

July 11, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**